IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 29144 of 2007(T)

PETITIONERS:
----

1. **JAYA JOSE,**
   TC 51/1400, THEKKEMADATHIL KUZHI VEEDU,
   SATHYAN NAGAR, INDUSTRIAL ESTATE P.O.,
   PAPPANAMCODE, THIRUVANANTHAPURAM.

2. **LORRY WORKER'S ASSOCIATION,**
   PAPPANAMCODE, THIRUVANANTHAPURAM, REPRESENTED BY
   K.C.LAILESWARAN, PRESIDENT.

BY ADV. SREEVALSAM GOPALAKRISHNAN,
SRI.S.NARAYANAN NAIR,
SRI.N.SASIDHARAN UNNITHAN.

RESPONDENTS:
----

1. **THE DISTRICT COLLECTOR & DISTRICT**
   MAGISTRATE, THIRUVANANTHAPURAM.

2. **THE COMMISSIONER OF POLICE,**
   THIRUVANANTHAPURAM CITY.

3. **SUPERINTENDENT OF POLICE,**
   THIRUVANANTHAPURAM RURAL.

BY GOVERNMENT PLEADER SRI. SALIM.P.A.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.29144 of 2007-T

Judgment

Balakrishnan Nair, J.

The first petitioner is the registered owner of a goods vehicle, bearing Registration No.KL-01/AQ 7969. The second petitioner is an association of lorry workers. This Writ Petition is filed by them, praying to issue a writ of prohibition or any other appropriate writ, restraining the respondents from harassing the petitioners from lawfully plying the vehicles in the city of Thiruvananthapuram as per Ext.P3 order. Ext.P3 is an order issued under Section 144 Cr.P.C., by the District Collector and District Magistrate, Thiruvananthapuram on 10.02.2006. The said order reads as follows :

> *"Whereas it has been made to appear to me that speeding and flouting of traffic and Motor Vehicle Rules by the drivers of the tipper lorries have resulted in a spurt in the road accidents in the district recently causing danger to human life and that the safety of the public is endangered by reason of the said plying of tipper lorries, I do hereby prohibit u/s 144 and 133 of Cr.P.C., the plying*

of the tipper lorries within the city limit between 8 am and 8 pm until further orders."

The petitioners submit, in view of the time limit of two months fixed under Section 144 Cr.PC, the above quoted order is no longer in force and therefore, the actions taken by the Police for the alleged violation of that order is illegal and unauthorised.

2. A statement has been filed on behalf of the 2nd respondent Commissioner of Police, in which it is submitted that there is no harassment meted out to the first petitioner or the members of the second petitioner. The allegations against the Police are denied. If the petitioners are aggrieved by Ext.P3, it is submitted, they may work out their remedy before the appropriate forum.

3. We notice that no specific materials are produced in this Writ Petition to show that action is being taken against the members of the second petitioner or the first petitioner for the alleged violation of Ext.P3. If the petitioners refuse to pay the fine demanded for the alleged violation of Ext.P3, they will be served with a charge memo. In that event, they can resist the said prosecution if it is launched for the violation of Ext.P3 by raising a defence that

Ext.P3 is no longer in force. We notice that in this Writ Petition, only general allegations are made based on which, this Court cannot issue any general directions. The prayer for issuing a writ of prohibition is quite inappropriate. Having regard to the facts of the case, the appropriate prayer is for issuing a writ of mandamus. But, a general mandamus cannot be issued to the statutory authorities concerning general issues. There is no specific plea of a particular prosecution with reference to the alleged violation of Ext.P3.

4. Further, the speeding of tipper lorries during day time through the city limits was a threat to the life and safety of the general public. Even in the absence of Ext.P3, the police have got ample powers under the Police Act to take action against the erring vehicles and their drivers. Further, the rash and negligent driving is a cognizable offence under Section 279 of the IPC also. In view of the above facts and the general complaints regarding the rash and negligent driving of tipper lorries, we feel that we should not issue the high prerogative remedy of writ of mandamus against the Police. If there is any particular incident, the petitioners can work out their remedy against the same. Their contentions against the validity of Ext.P3 are kept open.

The Writ Petition is dismissed subject to the above observations.

K.BALAKRISHNAN NAIR,JUDGE

22.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

sta